Filed 4/10/09 Bankers Life and Casualty Co. v. Williams CA1/5

# NOT TO BE PUBLISHED IN OFFICIAL REPORTS



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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| **BANKERS LIFE AND CASUALTY COMPANY,** | |
| **Plaintiff,** | **A121725** |
| **v.** | |
| **CRYSTAL J. WILLIAMS,** | |
| **Defendant and Respondent;** | **(Mendocino County Super. Ct. No. SC-UK-CV-G-06-98184)** |
| **KENNETH P. KNOLES,** | |
| **Defendant and Appellant.** | |

Kenneth P. Knoles (appellant) appeals a judgment following court trial in favor of Crystal J. Williams (respondent) after the trial court found that respondent was entitled to the entire proceeds of a life insurance policy on the life of the decedent, appellant's wife and respondent's mother. Appellant contends the court erroneously applied the law regarding community property, and substantial evidence does not support the court's finding of laches. We reverse.

## BACKGROUND[1]

In June 1992, appellant married respondent's mother, Karen Knoles (decedent).[2] At the time of the marriage, appellant was 66 years old and decedent was 47 years old. Decedent had no monetary assets when she married appellant. During the marriage the couple lived off the income from a restaurant and two farms they owned, as well as approximately $18,000 to $20,000 per month from appellant's social security, family trust and pension income. The couple did not have separate accounts; all of their funds were in joint accounts. Decedent was solely in charge of the bookkeeping, and she and appellant never went over the bills together.

In April 1996, decedent purchased a life insurance policy with a $100,000 death benefit (the policy) from Bankers Life and Casualty Company (Bankers Life).[3] Respondent and her son, Blake Williams (Blake), were originally the designated beneficiaries under the policy. In 2004, decedent changed the beneficiary designation and made respondent the sole beneficiary of the policy. The policy premium payments were $100 per month.

Decedent died in April 2006. The parties stipulated that at the time of decedent's death, respondent was the sole designated beneficiary under the policy.[4]

In November 2006, Bankers Life filed a complaint in interpleader against the parties, alleging that Bankers Life had received conflicting demands from them for the

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[1] Respondent's deposition was not marked or admitted into evidence, but was lodged at trial. (Code Civ. Proc., § 2025.620.) On appeal, both parties' briefs improperly cite to portions of respondent's deposition testimony that were not in evidence at trial. (Cal. Rules of Court, rule 8.204(a)(2)(C); Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2008) [¶] 9:131, pp. 9-37 to 9-38.) We disregard those facts improperly referred to in the parties' appellate briefs. (*Banning v. Newdow* (2004) 119 Cal.App.4th 438, 453, fn. 6.)

[2] Appellant and decedent are together referred to as "the couple."

[3] The policy is not included in the appellate record.

[4] Decedent's will left the entirety of her estate to respondent; nothing was left to decedent's other daughter, respondent's half-sister.

policy benefits.[5] It alleged respondent sought payment of the entire proceeds of the policy, and appellant claimed an interest in the proceeds of the policy because the premiums for the policy were paid during the couple's marriage by either community property funds or appellant's separate funds. Pursuant to Code of Civil Procedure section 386, subdivision (c), Bankers Life deposited with the court $102,093.51 on the policy, which included interest and a premium refund. In March 2007, the court granted the motion of Bankers Life to be discharged from liability and dismissed from the action.[6]

At the October 2007 trial, respondent testified she had had a close relationship with decedent. Respondent worked in the restaurant owned by the couple for some period of time. For about 12 or 18 months before decedent's death, respondent paid the bills for the couple, including payment of the $100 monthly policy premium. The bills were paid from two joint accounts in the names of the couple.

Respondent recalled an October or November 1996 dinner conversation at her father's San Ramon home regarding the policy after decedent purchased it. Appellant was present during the conversation that included respondent, decedent and respondent's father.[7] Respondent "believed" that during that conversation decedent said she intended for respondent and Blake to be the beneficiaries of the policy.

Respondent stated that subsequently, during a discussion at the couple's home, decedent informed respondent that she told Blake she had changed the beneficiary designation.[8] Respondent "believe[d]" that she, appellant and decedent were in the same room when decedent made this statement, but she was not entirely sure. After decedent said she changed the beneficiary designation, appellant remained silent. He did not sign

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[5] Although the proceeds of an annuity policy were also at issue at trial, the annuity policy is not at issue on appeal.

[6] Bankers Life is not a party to this appeal.

[7] Respondent earlier testified that she "believed" appellant was present at the conversation.

[8] Blake testified that in 2004 decedent told him she was removing him as a beneficiary of the policy and intended for the policy proceeds to go to respondent.

anything approving the change of beneficiary. After decedent's death, Jim Everett, of Bankers Life, informed appellant that respondent was the designated beneficiary of the policy. Respondent said appellant told her he was surprised to learn that she had been listed as the beneficiary under the policy.

Appellant testified he knew "right from the start" that decedent had acquired a $100,000 life insurance policy. However, he did not read the policy or know who the designated beneficiar(ies) were under the policy until after decedent's death, when he was so informed by Everett. He "never heard about" decedent's change of the policy's beneficiary from respondent and Blake to respondent. Appellant was not involved in decedent's decision to purchase the policy, and while she was alive they never discussed the policy's beneficiary designation. During decedent's lifetime, it never occurred to appellant to inquire about the policy's beneficiary, since he "wasn't that involved with that particular transaction." However, appellant had "probably" been aware of the amount of the policy premiums "as [they came] through." He said that all of the couple's accounts were in both of their names. He had no separate accounts during the marriage.

Appellant said that after decedent purchased her policy, she found out that because of his age, it would be prohibitively expensive for him to purchase life insurance. Instead, appellant and decedent purchased a farm in Kansas to provide decedent with income after appellant's death. Appellant testified he and decedent agreed to place no restrictions on each other. "We could do what we want, and we did what we want." When asked why he and decedent never discussed the beneficiary designation of the policy, appellant testified, "[I]t wasn't in my lexicon. . . . [I]t's something I don't normally talk about." He said he "just let [decedent] do what she wanted to do."

Appellant argued the policy premiums were paid with funds from the couple's joint account, which were community property funds, and therefore he had a community property interest in the proceeds of the policy. Appellant asserted he and decedent each had a one-half interest in the policy proceeds, and decedent could only give respondent her one-half interest. Respondent argued the court should apply principles of laches and equitable estoppel and award her the entirety of the policy proceeds.

Following trial, the court issued a memorandum of decision.[9] It found the policy was purchased with community property funds. The court stated, "[t]here is evidence in the record to support [respondent's] testimony that [appellant] knew of the fact that the decedent was in effect making a small bequest to her daughter through the use of the life insurance policy, that he never objected, and that he knew that he wasn't the beneficiary." The court found that the income of the couple was more than $20,000 a month and, therefore, the monthly policy premium was about "four tenths of a percent of their gross, pre-tax income." The court stated: "It is more likely than not, that the intent of the policy, was for the decedent to be able to spend a modest amount of community funds to provide a modest legacy for [respondent]. I am persuaded from the evidence, that the information was known to [appellant], or readily available to him, and he chose to ignore it. One possible reason was that it was a small trivial amount of money, relative to their total income. An additional motivation might have been, to keep the peace in the family, in what apparently was a good and beneficial marriage for both [appellant] and the decedent."

The court concluded appellant's delay in objecting to decedent's beneficiary designation until after her death constituted laches. The court concluded respondent was prejudiced by the delay, because "if the matter had been raised earlier, the decedent could have made alternative arrangements, or at least put the discussion on the table with [appellant] and possibly worked out some kind of amicable resolution." The court also concluded there was detriment to respondent because "she has lost the benefit of [decedent's] testimony as to the intent in acquiring the policy as a result of [decedent's] untimely death."

In dicta, the trial court stated: "There is also a line of authority from the First District Court of Appeal recognizing that a nonconsenting spouse's set aside remedy may be subject to an estoppel defense." (Citing *Bush v. Rogers* (1941) 42 Cal.App.2d 477,

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**9** The court stated that neither party had requested a statement of decision, the trial had lasted less than one day, and the memorandum of decision would constitute its statement of decision.

479-480 (*Bush*) and *Miller v. Johnston* (1969) 270 Cal.App.2d 289, 300, fn. 6 (*Johnston*).)

The memorandum of decision then discussed the annuity, stating: "The situation on the annuity, however, is much different. First of all, the annuity payments were short lived, only lasting for about four months, prior to the decedent's death. Secondly, the annuity payments were a substantial amount of money, almost 10 [percent] of their monthly income. Thirdly, unlike the life insurance proceeds, [appellant] immediately objected to the monetary outflow caused by the annuity payments and demanded that they stop forthwith. Accordingly, that was an unauthorized expenditure of community funds and the $8,000 residual value in the annuity, is awarded entirely to the community."

In its March 28, 2008 judgment, the court stated appellant's failure to timely object to the naming of respondent as the sole beneficiary under the policy constituted laches. The judgment awarded respondent $102,093.51 plus any accrued interest thereon as the proceeds of the policy. The court granted appellant's application for a temporary stay of enforcement of the judgment pending the filing of his appeal. Thereafter, appellant filed a timely appeal from the judgment.

## DISCUSSION[10]

### I. *The Court's Finding of Laches Is Unsupported by Substantial Evidence*

Appellant contends it is undisputed that the insurance policy premiums were paid with community property funds, and he did not consent in writing to relinquish his community property interest in the policy. Therefore, he argues he is entitled to his one-half community share of the policy proceeds. He contends there is no substantial

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**10** Preliminarily, we reject respondent's assertion that appellant's failure to provide an adequate summary of significant facts waives his claim that the judgment is not supported by substantial evidence. Respondent suggests that appellant erred in including facts from her deposition testimony. As we noted, *ante*, since respondent's deposition testimony was not in evidence at trial, it may not be relied upon on appeal.

evidence to support the court's finding that the doctrine of laches applies to defeat his community interest in those proceeds.

"When life insurance premiums are paid with community property funds, the resulting policy is an asset of the community. [Citations.] The interest of the surviving spouse may not be defeated by a gift of the policy proceeds to a third party named as beneficiary without the spouse's consent. [Citations.]" (*Life Insurance Co. of North America v. Cassidy* (1984) 35 Cal.3d 599, 605-606 (*Cassidy*); accord, *In re Marriage of O'Connell* (1992) 8 Cal.App.4th 565, 577-578 (*O'Connell*).)[11]

"Life insurance proceeds are subject to the general rule that a spouse cannot dispose of community personal property without either the spouse's written consent or consideration. ([Former] Civ. Code, § 5125, subd. (b).)"[12] (*O'Connell, supra,* 8 Cal.App.4th at p. 578; accord, *Patillo v. Norris* (1976) 65 Cal.App.3d 209, 217 (*Patillo*).) The rights of a spouse to recover the community share of an insurance policy are separate and distinct from any right which the spouse may have due to being named as the beneficiary of the insurance policy. (*Cassidy, supra*, 35 Cal.3d at p. 606.) Therefore, one spouse has the power to give his/her half of the insurance policy proceeds to a third-party beneficiary, but not the other spouse's half. (See *Patillo,* at p. 217 [husband has power to gift his community share of insurance proceeds to named beneficiary, but not wife's half].)

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**11** However, if the spouse is the beneficiary of the insured spouse's policy, this is a gift of community property to the beneficiary spouse. At the death of the insured spouse, the policy proceeds vest in the beneficiary spouse as his or her separate property. (*Estate of Miller* (1937) 23 Cal.App.2d 16, 18.)

**12** In 1992, former Civil Code section 5125 was repealed, and replaced without change by Family Code section 1100. (Stats. 1992, ch. 162, §§ 3, 10, 13, pp. 464, 722, eff. Jan. 1, 1994.)

Family Code section 1100, subdivision (b), provides: "A spouse may not make a gift of community personal property, or dispose of community personal property for less than fair and reasonable value, without the written consent of the other spouse. This subdivision does not apply to gifts mutually given by both spouses to third parties and to gifts given by one spouse to the other spouse."

A spouse may execute a written release of his or her community interest in an insurance policy on the life of the other spouse. Upon the execution of such a release, the spouse, if named as a beneficiary under the other spouse's policy, retains an expectancy of a gift which will occur at the time of the insured's death. (*Grimm v. Grimm* (1945) 26 Cal.2d 173, 175-176; accord, *Cassidy, supra,* 35 Cal.3d at p. 606.)

In this case, it is undisputed that the policy premiums were paid with community funds. Although decedent was free to designate respondent as the beneficiary of decedent's community interest in the policy, absent appellant's written consent, release, or waiver, decedent could not deprive him of *his* community interest in the policy merely by naming respondent as the policy beneficiary. (See *Cassidy,* 35 Cal.3d at pp. 605-606; see also *Minnesota Mut. Life Ins. Co. v. Ensley* (9th Cir. 1999) 174 F.3d 977, 985.) No evidence was presented of appellant's written consent to decedent's disposition of his one-half community property share of the policy proceeds, or of his release of his community share of the policy proceeds.

The trial court's memorandum of decision acknowledged that applying the "general rule" pursuant to Family Code section 1100, subdivision (b), and *Cassidy,* would "give the community," i.e., appellant, a one-half interest in the policy proceeds. However, the court found the doctrine of laches applicable to deny appellant this share. Appellant contends the court's application of laches was unwarranted and unsupported by the evidence.

Respondent cites three cases in support of her argument that equitable relief was properly granted by the court in the instant case: *Brown v. Brown* (1932) 125 Cal.App. 429, *Lezine v. Security Pacific Fin. Services, Inc.* (1996) 14 Cal.4th 56, and *Estate of Teel* (1949) 34 Cal.2d 349. *Brown* involved a wife's equitable action to cancel a deed executed by her husband transferring their community real property. In the course of upholding the trial court's decision to overrule a demurrer based on a technical defect in the complaint, *Brown* noted that a wife is entitled to the aid of equity to protect her inchoate expectancy in community real property. (*Brown,* at pp. 433-435.) *Lezine* was an action by a wife to set aside her husband's unilateral transfer of a security interest in

real property without her knowledge or consent in violation of former Civil Code section 5127.[13] The court upheld the granting of equitable relief to the wife to set aside the transfer. The court also granted relief to an innocent encumbrancer, by conditioning the set aside on a money judgment to the encumbrancer, against the wife, in the amount of the formerly secured debt. (*Lezine,* at pp. 59-60, 71.) In *Teel*, after the husband filed for divorce, his wife filed a homestead declaration on their real property without the husband's knowledge. Thereafter, they entered into a marriage settlement agreement by which the husband agreed to convey to the wife as her separate property, his rights to the real property. Subsequently, an interlocutory decree issued, granting the wife's divorce complaint and approving the marital settlement agreement, and the husband executed a deed conveying the property to the wife. After the wife's death, the husband sought the real property by filing an equitable action to vacate the divorce decree, set aside the marital settlement agreement, and cancel the deed. He asserted that he and the wife had reconciled and agreed to cancel the deed. The probate court found that the homestead was valid and that at the time of the wife's death, the property vested in the husband as the surviving spouse. The Supreme Court reversed, concluding that the interlocutory decree finally disposed of the husband and wife's property rights and could not be challenged in the probate action. (*Teel*, at pp. 350-354.)

While each of these cases involved actions seeking equitable relief, none permit a finding of laches or other equitable relief to trump the requirement of written consent contained in Family Code section 1100, subdivision (b), so as to deprive a spouse of his or her community share of the policy proceeds. In any event, even if the doctrine of laches could apply in a case such as this, we agree with appellant's contention that there is no substantial evidence supporting the doctrine, and therefore the court's finding of laches cannot stand.

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[13] Effective January 1, 1994, former Civil Code section 5127 was repealed and reenacted as Family Code section 1102, without substantive change. (*Lezine*, *supra*, 14 Cal.4th at p. 59, fn. 1.)

The equitable defense of laches may bar relief to those who neglect their rights, where the neglect operates to the detriment of others. (*Bono v. Clark* (2002) 103 Cal.App.4th 1409, 1417-1418 (*Bono*).) "The doctrine of laches bars a cause of action when the plaintiff unreasonably delays in asserting or diligently pursuing the cause and the plaintiff has acquiesced in the act about which the plaintiff complains, or the delay has prejudiced the defendant. [Citations.]" (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77 (*Johnson*), accord, *Pacific Hills Homeowners Assn. v. Prun* (2008) 160 Cal.App.4th 1557, 1564-1565.) "Delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. [Citation.] What makes the delay unreasonable in the case of laches is that it results in prejudice. [Citation.]" (*Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29, 36.) Laches "is not applied strictly between near relatives," " 'is not designed to punish a plaintiff,' " and "is 'invoked only where a refusal would be to permit an unwarranted injustice.' " (*Berniker v. Berniker* (1947) 30 Cal.2d 439, 448-449, accord *Bono,* at p. 1418.) In general, the existence of laches is a question of fact determined by the trial court in light of all of the applicable circumstances. A court's finding of laches is reviewed for substantial evidence. (*Bono,* at pp. 1417-1418.)

As to prejudice, appellant argues the court's finding of prejudice was based solely on hypothetical possibilities and not evidence presented at trial. " 'Prejudice is never presumed; rather it must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and production of evidence on the issue.' [Citations.]" (*Bono, supra,* 103 Cal.App.4th at p. 1420.) Respondent concedes there is no evidence as to what decedent would have done had appellant informed decedent that he did not consent to her disposition of his community share of the policy proceeds to respondent. However, respondent argues that decedent's "act of taking out the policy demonstrates a clear intent by [decedent] to provide for [respondent] after [decedent's] death," and it was reasonable for the court to infer that if appellant informed decedent that he did not condone the use of community funds for the policy, decedent would have found another way to provide for respondent upon decedent's death.

We agree with appellant; the trial court's finding of prejudice was entirely speculative.[14] Quoting *Johnson, supra,* 24 Cal.4th at page 68, respondent highlights the disjunctive used by the Supreme Court in describing the elements of laches as requiring "unreasonable delay plus *either* acquiescence . . . *or* prejudice." (Italics added by respondent.) However, respondent does not argue that appellant's acquiescence in the absence of prejudice is sufficient to demonstrate laches, and cites no cases to that effect. She therefore has forfeited any such argument.[15] (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra,* [¶] 9:21, p. 9-6.)

II. *Equitable Estoppel*

As we noted previously, the trial court stated: "There is also a line of authority from the First District Court of Appeal recognizing that a nonconsenting spouse's set aside remedy may be subject to an estoppel defense." (Citing *Bush, supra,* 42 Cal.App.2d at pp. 479-480; *Miller, supra,* 270 Cal.App.2d at p. 300, fn. 6.) Appellant argues that equitable estoppel has not been applied in the context of community property life insurance proceeds, and its application is not supported by substantial evidence.

" 'Estoppel applies to prevent a person from asserting a right where his conduct or silence makes it unconscionable for him to assert it.' [Citation.] Either unjust enrichment or a change in position may be the basis of an unconscionable injury which will estop a person from asserting the requirement of a writing. [Citation.]" (*In re Marriage of Stephenson* (1984) 162 Cal.App.3d 1057, 1072 (*Stephenson*).) " '[F]our elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to

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[14] We note that even if appellant had objected to decedent's designation of respondent as the beneficiary of the policy, by operation of community property law, decedent's community half share of the policy proceeds would have passed to any beneficiary she had named, including respondent.

[15] We therefore do not address the significance of the disjunctive used by the Supreme Court in *Johnson.*

believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' " (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) The party estopped from asserting a right must have actual knowledge of the full facts, or at least a sufficient knowledge of the circumstances so that he or she ought to have such knowledge. (*Id.* at p. 491 & fns. 27, 28.) Equitable estoppel is primarily a question of fact, with the burden of proof on the party asserting it. (*San Diego Mun. Credit Union v. Smith* (1986) 176 Cal.App.3d 919, 923.)

In *Bush*, the plaintiffs were husband and wife, who brought a quiet title action regarding mining claims asserted by the defendants in connection with the defendants' 20-year lease of the husband and wife's property. (*Bush, supra,* 42 Cal.App.2d at p. 478.) Only the husband signed the lease. The plaintiffs claimed the lease was invalid because the mining claims were community property and the wife did not sign the lease as then required by former Civil Code section 172a.[16] (*Bush*, at p. 479.) *Bush* noted that, under that section, a wife's conduct may estop her from denying the validity of an instrument she did not execute. (*Id.* at p. 480.) The court found that by participating in the lease negotiations with the defendants, and by being present during a discussion of the lease terms just prior to its execution, the wife was estopped to assert her interest in the lease. (*Id.* at pp. 480-481.)

In *Miller*, the defendants, Mr. and Mrs. Johnston, appealed a judgment granting the plaintiffs, Mr. and Mrs. Miller, prescriptive easements over defendants' property. (*Miller v. Johnston, supra,* 270 Cal.App.2d at p. 291.) The defendants asserted that there was no prescriptive easement over the portion of the property governed by a licensing agreement signed by Mr. Miller. (*Id.* at pp. 291-292, 296.) In a footnote, the Court of Appeal noted that in the trial court the plaintiffs asserted, pursuant to former Civil Code section 172a, that Mrs. Miller could not be bound by the license agreement to which she was not a party. The court rejected the argument, stating, "[Mr. Miller] as manager of the

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**16** Former Civil Code section 172a was repealed in 1969. (Stats. 1969, ch. 1608, § 3, p. 3313; Stats. 1969, ch. 1609, § 34, p. 3361.)

community was empowered to settle the dispute claim, and [Mrs. Miller's] knowledge and acquiescence would bind her." (*Miller,* at p. 300, fn. 6.)

*Bush* and *Miller* are inapposite in that they involved application of principles of estoppel to former Civil Code section 172a, which permitted the husband to have sole management and control of community real property, but also provided that " 'the wife must join with him in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered . . . .' " (See *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 33.)

*Stephenson* concluded that absent written consent, written ratification, waiver or estoppel, a spouse cannot defeat the community property interest of the other spouse by unilaterally purporting to make a gift of it pursuant to the California Uniform Gifts to Minors Act. (*Stephenson, supra,* 162 Cal.App.3d at p. 1071.) It noted that, in *Bush*, the wife's participation or acquiescence in the disposition of community property to third parties induced those parties to deal with the property as though she had consented to that disposition, to the detriment of the third parties. (*Stephenson,* at pp. 1072-1073.) The court found no evidence of detrimental reliance to support application of estoppel. It also stated that the Legislature intended that former Civil Code section 5125, subdivision (b), "strictly regulate one spouse's ability to give away community property," and that its written consent requirement "must be interpreted to require something more than the tacit approval of the gift by the nondonor spouse." (*Stephenson,* at p. 1073.)

In this case, there is no evidence to support application of equitable estoppel. Although evidence suggested appellant may have known decedent designated respondent as the policy beneficiary, no evidence was presented that appellant engaged in anything more than the "tacit approval" found insufficient in *Stephenson.* Moreover, there was no evidence of detrimental reliance by respondent. (See *Stephenson, supra,* 162 Cal.App.3d at pp. 1072-1073.) Consequently, equitable estoppel did not defeat the written consent requirement of Family Code section 1100, subdivision (b).

We conclude the court erred in awarding respondent the entire proceeds of the policy. Appellant and respondent are each entitled to one half of the policy proceeds.

## DISPOSITION

The judgment is reversed. Appellant is entitled to costs on appeal.

SIMONS, J.

We concur.

JONES, P.J.

STEVENS, J.*

* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.